

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

GABRIEL ARMENDARIZ,
ERIC DION COLEMAN, JACOB GOMEZ,
TONY LOVATO, MATTHEW J. LUCERO,
EDWARD R. MANZANARES, JOE MARTINEZ,
CHRISTOPHER MAVIS, PHILIP TALACHY,
FELIPE J. TRUJILLO, and JOSEPH VIGIL,
on their own behalf and on behalf of
a class of similarly situated persons,

Plaintiffs,

v.

Case No. 1:17-cv-00339-WJ-LF

SANTA FE COUNTY BOARD OF COMMISSIONERS,
and MARK GALLEGOS, in his individual and official capacity,
and INDUSTRIAL COMMERCIAL COATINGS, LLC,

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFFS' REQUEST FOR EXTENSION OF TIME

THIS MATTER comes before the Court upon Plaintiffs' Motion for Extension of Time, filed July 20, 2018 (**Doc. 124**). Having reviewed the parties' briefs and applicable law, the Court grants Plaintiffs' motion.

BACKGROUND

This case is a putative class action arising from Defendants' renovation of the shower facilities at the Santa Fe Adult Correctional Facility ("ACF") in 2014 when Plaintiffs and the class members were inmates at the facility. Plaintiffs allege that they were exposed to dust, debris, and hazardous chemicals, which caused them injury, and assert both federal civil rights and state law claims against Defendants.

Plaintiffs seek a two-week extension of time within which to file their response to the Motion to Dismiss the claims of James Wheeler, or Alternatively, for Entry of an Order to Show Cause Why the Claims of James Wheeler Should Not Be Dismissed and/or Other Sanctions (Doc. 112). Plaintiffs base the request on time needed due to a change in law firms by one of Plaintiffs' attorneys and summer travel plans. According to Plaintiffs, the County Defendants (Santa Fe Board of Commissioners and Mark Gallegos) will agree only to a one-week extension.

Defendants view the request as yet another form of procrastination by Plaintiff Wheeler who has failed to appear for his deposition in this case and whose conduct is the subject of Defendants' pending motion to dismiss (Doc. 112). The Court does not intend to merge the merits of that motion with a request for an extension of time where the difference between the parties is only one week, and where Plaintiffs have already filed the response on the date they requested. *See* Doc. 137 (Resp. to Mot. to Dismiss). Therefore, Plaintiffs are granted the extension they request in this motion.

The Court observes that there appears to be a history in this case with certain Plaintiffs failing to show up for scheduled depositions or for otherwise failing to participate in their litigation responsibilities. *See, e.g.*, Docs. 85, 117, 127. The Court takes this opportunity to remind counsel that motions seeking judicial relief based on a plaintiff's willful failure to fully participate in the discovery process or otherwise cause delay in the litigation of this case will be considered carefully and fairly but always with an eye to the Court resources that are taken up by such motions, which is significant given the heavy docket under which this Court labors. Any conduct by a plaintiff which appears to purposefully hinder litigation in this case or to delay this Court's scheduling orders will be viewed by this Court as potential grounds for sanctions, including dismissal. For illustrative purposes, the Court refers counsel to another case that was

before the undersigned, where certain plaintiffs in a putative class action were dismissed for similar conduct. *See Aguilar et al. v. Management & Training Corp.*, No. 16-CV-00050 WJ/GJF, Doc. 97 (dismissing plaintiffs with and without prejudice). The Court suggests that counsel for Plaintiffs advise their clients that willful obstruction of the discovery process and similar conduct may result in consequences they neither expect nor desire.

Therefore, Plaintiff's request for an extension of time is GRANTED, with the caveat that the Court will look closely at future requests for extensions in this case, in particular to assure that the requests are not an attempt to delay these proceedings.

IT IS SO ORDERED.



CHIEF UNITED STATES DISTRICT JUDGE